

IN THE DISTRICT COURT OF DOUGLAS COUNTY, NEBRASKA

STATE OF NEBRASKA, ex rel.,)
 JIM MACY, Director,)
 NEBRASKA DEPARTMENT OF)
 ENVIRONMENT AND ENERGY,)
)
 Plaintiff,)
)
 v.)
)
 ALEGENT HEALTH – BERGAN)
 MERCY HEALTH SYSTEM d/b/a)
 CHI HEALTH CREIGHTON)
 UNIVERSITY MEDICAL CENTER –)
 BERGAN MERCY,)
)
 Defendant.)

Case No. CI 22-7023

CONSENT DECREE

#6 FILED
IN DISTRICT COURT
DOUGLAS COUNTY NEBRASKA

SEP 27 2022

JOHN M. FRIEND
CLERK DISTRICT COURT

COMES NOW Plaintiff, the State of Nebraska on behalf of Jim Macy, Director of the Nebraska Department of Environment and Energy (“Department”), proceeding on the Complaint filed herein and appearing through counsel, Douglas J. Peterson, Attorney General, and Defendant, Alegent Health – Bergan Mercy Health System, a Nebraska corporation, d/b/a CHI Health Creighton University Medical Center – Bergan Mercy, appearing through counsel, and each party having consented to the making and entering of this Consent Decree without trial, request entry of this Consent Decree.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED as follows:

1. This Court has jurisdiction over the subject-matter of this action, pursuant to Neb. Rev. Stat. § 24-302, and over the parties to this action. Venue is proper pursuant to Neb. Rev. Stat. § 25-403.01, as Defendant’s facility is located in Douglas County and the events took place in Douglas County.

2. In the Complaint, Plaintiff alleges Defendant violated the Nebraska Environmental Protection Act (“NEPA”), Neb. Rev. Stat. § 81-1501 *et seq.*, and Title 128 of the Nebraska Administrative Code by improperly offering hazardous



waste for transport and disposal to a party unauthorized to transport and dispose of hazardous waste.

3. The parties agree settlement of this matter is in the public interest and entry of this Consent Decree is the most appropriate means of resolving their dispute. The parties desire to conclude this case without trial or adjudication of any issues of fact or law. The parties further desire to conclude this case without this Consent Decree constituting an admission by Defendant with respect to such issues.

4. This Consent Decree will be in full satisfaction of all claims between the parties alleged in Plaintiff's Complaint. This Consent Decree does not satisfy any unknown or future violations of any statutes or rules and regulations.

5. IT IS THEREFORE ORDERED that Defendant shall pay a civil penalty, under Neb. Rev. Stat. § 81-1508.02(2), in the amount of eighty thousand dollars (\$80,000.00) to the District Court for Douglas County, Nebraska, as well as reimburse the Plaintiff for court costs in the amount of eighty-six dollars (\$86.00), subject to the following:

- A. Forty thousand dollars (\$40,000.00) of the civil penalty shall be paid by Defendant within fourteen (14) days of entry of the Consent Decree and made payable to the Clerk of the District Court for Douglas County. Defendant shall also reimburse the Plaintiff for court costs in the amount of eighty-six dollars (\$86.00) within thirty (30) days of entry of the Consent Decree and made payable to the Nebraska Attorney General's Office;
- B. The remaining forty thousand dollars (\$40,000.00) shall be waived if Defendant complies with the following terms and conditions:
 - i. Defendant shall not have any violations of NEPA or Title 128 of the Nebraska Administrative Code during the compliance period of this Consent Decree. The

compliance period runs for a period of six months from the entry of this Consent Decree;

- ii. Defendant shall develop an in-house training module consisting of the following:
 - 1. The regulatory distinctions between hazardous and non-hazardous pharmaceutical wastes;
 - 2. Internal procedures for separation of hazardous from non-hazardous pharmaceutical wastes;
 - 3. Differences in on-site storage and packaging prior to offering for transport and disposal; and
 - 4. A description of the differences in off-site transport and ultimate disposal between hazardous and non-hazardous pharmaceutical wastes generated by Defendant at its Bergan Mercy facility.

- C. Defendant shall provide the Nebraska Attorney General's Office with a PowerPoint slide presentation printout containing the course content, course manual, or similar; and a list of Bergan Mercy staff who received the training consisting of information such as date of training, employee name, employee job title, and description of employee duties in relation to hazardous pharmaceutical waste management. The course content shall be provided to the Nebraska Attorney General's Office in draft form prior to presentation for review and comment by the Department.

- D. If Defendant does not comply with the terms and conditions of Paragraphs 5(B) & (C), above, then the remaining forty thousand dollars (\$40,000.00) will not be waived and, instead, Defendant shall pay the remaining half of the civil penalty to the Clerk of the District Court for Douglas County within thirty (30) days of notice of failure to comply with and satisfy the terms and conditions for waiver of the remaining half of the civil penalty;
- E. All civil penalty payments made by the Defendant will be deposited by the Court and remitted to the County Treasurer for Douglas County for use and support of the common schools in Douglas County as directed by Article VII, Section 5, of the Nebraska Constitution; and
- F. No later than fourteen (14) days after the end of the compliance period, or all other terms and conditions in Paragraphs 5(B) & (C) are completed, whichever is later, Defendant shall provide Plaintiff with a Showing of Compliance. This Showing of Compliance must indicate Defendant complied with all terms and conditions in the Consent Decree. The Department will verify compliance with the Consent Decree. Plaintiff will file a Satisfaction of Judgment with the Court after Defendant provides its Showing of Compliance and the Department verifies Defendant fully complied with all terms and conditions in this Consent Decree. If Defendant, however, does not comply with all terms and conditions of the Consent Decree during the compliance period, then Plaintiff, in its sole discretion, may file with the Court a motion to enforce the terms of the Consent Decree to recover any unpaid civil penalties and to demand completion of any terms and conditions under the Consent Decree, if necessary.

6. This Consent Decree is binding on Defendant's successors and assigns. Any change in ownership or corporate or other legal status, including,

but not limited to any transfer of assets or real or personal property, shall in no way alter the status or responsibilities of Defendant under this Consent Decree.

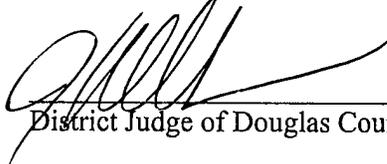
7. This Consent Decree will have no preclusive effect on any enforcement action brought by Plaintiff against Defendant for unknown or future violations of any statutes or rules and regulations. Defendant acknowledges that noncompliance with the terms and conditions set forth in this Consent Decree may also be violations of NEPA or applicable rules and regulations, and this Consent Decree does not preclude Plaintiff from bringing an independent enforcement action seeking civil penalties and/or injunctive relief for such violations.

8. Plaintiff reserves its rights to seek civil penalties and/or injunctive relief against Defendant for unknown or future violations of NEPA and applicable rules and regulations.

9. The undersigned consent without further notice to the form and entry of this Consent Decree.

DATED this 26 day of Sept 2022, in Douglas County, Nebraska.

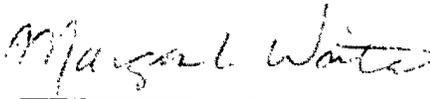
BY THE COURT:



District Judge of Douglas County, Nebraska

STATE OF NEBRASKA, ex rel., JIM MACY,
Director, NEBRASKA DEPARTMENT OF
ENVIRONMENT AND ENERGY, Plaintiff

BY: Douglas J. Peterson, #18146
Attorney General

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ALEGENT HEALTH - BERGAN MERCY
HEALTH SYSTEMS d/b/a CHI HEALTH
CREIGHTON UNIVERSITY MEDICAL
CENTER - BERGAN MERCY, Defendant

BY: 
Jayleen Casano
President, Creighton University Medical
Center - Bergan Mercy

CERTIFICATE OF SERVICE

I, the undersigned, certify that on September 27, 2022, I served a copy of the foregoing document upon the following persons at the addresses given, by mailing by United States Mail, postage prepaid, or via E-mail:

Douglas J Peterson
katie.beiermann@nebraska.gov

Maegan L Woita
Maegan.woita@nebraska.gov

Date: September 27, 2022 BY THE COURT:

John M. Friend
CLERK

